IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 105 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AJAYSINGH ALIAS FAUJI S/O MEHARSINGH JATAP
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 105 of 1999
MR MH BAREJIA for Appellant No.
MR BS SUPEHIA for Appellant No.
MR LR POOJARI ADDL PP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 05/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

The appellants original accused Nos. 1, 2 and 3, have filed the present appeal through advocate Shri Barejia and challenged the judgement and order conviction and sentence recorded by the learned Additional City Sessions Judge, Ahmedabad, Court No. 9 convicting the appellants original accused for the offences under Sections 397, 120(B) of the IPC and ordered to suffer RI for 10 years and fine of Rs.3000 each and in default of fine, further RI for 3 months as well as also recorded conviction for the offence under Section 452 of the IPC and sentenced to suffer RI for 5 years and fine of Rs.2000 each, in default of fine, further RI for 2 months. The learned trial Judge has also convicted appellant accused Nos. 1 and 2 for the offence under Sections 25 (1) and 27 of the Arms Act as well as for the offence under Section 135 (1) of the Bombay Police Act and sentenced to undergo RI for one month and fine of Rs.100 each and in default of fine, further RI for a week and for the offence under Section 135 (1) of the Bombay Police Act, the appellant Nos. 1 and 2 were ordered to suffer RI for one month and fine of Rs.100 and in default of fine, further RI for a week.

2. The appeal filed by the appellants got admitted by the Division Bench on 17th September, 1999. The appellants No. 2 and 3 had moved the appeal through jail and the said two appeals being Criminal Appeal Nos. 63 of 1999 and 223 of 1999, in which the office has made appointment of Shri Supehia, learned advocate and when all the three appeals were notified before the Division Bench on 17th September, 199. The Division Bench has in turn while admitting the appeal observed, which reads as under :-

"Mr. Supehia has submitted that this Criminal Appeal has been filed on behalf of three appellants against the order of their conviction and sentence and this Appeal has been filed through their lawyer M.H. Barejia. It has also been pointed out that the Criminal Appeal No. 63/99 in which Mr. B.S. Supehia has been appointed to represent one of the appellants, namely Satpal Singh alias Bitu S/o. Bharatsingh Sangram Singh Chauhan, had been received through jail and Criminal Appeal No. 223 of 1999 had been filed on behalf of two appellants, namely Ajaysingh alias Mohansingh Jatap and Vikramsinh

alia Sushil alias Pappu. Mr. B.S. Supehia has also pointed out that both these Appeals Nos. 63/99 and 223/99 have been moved by the same appellants whereas the appellant in these Appeals are also the appellants in Appeal No. 105/99.

Admit. Records of Criminal Appeal No. 63/99 and Criminal Appeal No. 223/99 shall remain tagged with this appeal."

3. Thereafter, the appellants accused had moved an application through jail and requested for providing legal aid and said application being Criminal Misc. Application No. 5527 of 2001 was considered by the Division Bench and office was directed to provide legal aid to the appellants accused in view of the order dated 27.8.2001. When the matter was listed before us for final hearing, we had as per order dated 30.9.2004 had directed the registry to furnish the paperbook to Mr. Supehia, who was appointed to represent the appellants accused in the present appeal and the request for adjournment sought for by Mr. Supehia was granted and accordingly, this matter reached for final hearing before us on 4.10.2004.

4. Mr. Supehia, learned advocate during hearing has taken us through the evidence of the prosecution witnesses recorded during trial as well as the documentary evidence namely certain panchnamas drawn by the Investigating Agency in presence of the panchas regarding arrest of the accused, recovery of the weapon at the instance of the accused and complaint filed by Shri Shankarbhai Suvera Ex.21, who was at the relevant time working as Assistant Manager in Central Bank of India, having its branch situated at Gandhi Ashram, Sabarmati and the FIR Ex. 21 and the panchnama in respect of the identification parade arranged by the Investigating Officer before the Executive Magistrate Shri Ranjeet Gohil PW-1 and panchnama of identification parade recorded during the identification parade held by Shri Gohil and the judgement under challenge.

5. While taking us through the evidence and the judgement, Mr. Supehia has vehemently contended before us that the learned trial Judge was not right in accepting the prosecution case and conviction recorded by the learned trial Judge is accordingly not proper and the same deserves to be set aside. Mr. Supehia has also in his submission has vehemently contended that in the present case, the independent witness namely panchas have not supported the prosecution case and which the result

that the recovery or the arrest of the accused persons is not proved through independent witnesses and in view of the finding recorded by the learned trial Judge convicting the accused, the said finding recorded by the learned trial Judge is not in accordance with law and the same is required to be set aside. He next urged that most of the important witnesses of the prosecution, who according to the prosecution were an eye-witness, the said witnesses have not supported the case and evidence of other witnesses, who according to him, they are very much interested for seeking conviction of the accused and the order of conviction is deserves to be set aside. Mr. Supehia has in support of his submission while taking us through the evidence of PW-3 Anand K. Rathod, has not supported the case of the prosecution and he was treated hostile to the prosecution and further that the conviction recorded by the learned trial Judge on the basis of the evidence of interested persons, who have interested in securing conviction of the accused, is not proper and accordingly, prayed that order of conviction and sentence recorded by the learned trial Judge deserves to be set aside by allowing the present appeal. Mr. Supehia has alternatively urged before us that considering his submission and on going through the entire evidence with the judgment recorded by the learned trial Judge, the prosecution has established the case beyond reasonable doubt against the accused, then, according to him that the conviction recorded and the sentence imposed by the learned trial Judge deserves to be modified and the sentence imposed by the learned trial Judge be modified by passing an order of sentence undergone looking to the age of the accused persons at the time of commission of offence, according to Mr. Supehia that accused No. 2 was young boy of 20 years while accused No. 3 was a young boy of 23 years and accused No. 1 was young man of 32 years. Looking to the age and further that even as per the prosecution case, though from the accused person, the deadly weapons like country made revolver was found and knife were possessed by the accused persons, However, the accused has not used these weapons and no cash amount has been in fact looted as according to the prosecution case, all the currency notes were put in one bag and while running the accused persons have thrown away the bag in the Bank itself and ultimately, no loss to the Bank and according to Mr. Supehia that this is a case in which, while confirming the order of conviction and sentence, the order of sentence be modified as the accused are in jail for more than 7 years and in view of the provisions of Section 397, minimum sentence provided is of 7 years, which according to him, the ends of justice will meet if the

order of sentence undergone is passed by allowing the appeal partly. According to Mr. Supehia that all the three accused are residents of other State namely State of Hariyana and State of Rajesthan.

6. Mr. Poojari, learned Addl.P.P. has vehemently urged that prosecution has established the case beyond reasonable doubt. It is a Bank robbery case, where the accused though at the young age had involved themselves in such criminal activities, the accused had also kept lethal weapons like country made pistol and knife and have committed offence, though they are from other States, no leniency is to be shown to them and requested us that this is a case, in which, appeal filed by the appellants accused be dismissed. He has also submitted that no interference is required by this court even while considering the request made by Mr. Supehia for reducing the sentence imposed on the accused.

7. In light of the contentions raised before us, in brief, we will examine the prosecution case.

8. The incident in question has occurred on 5th May, 1997 at Central Bank of India having its branch situated at Gandhi Ashram. PW-2 complainant Shankarbhai, who was at the relevant time in-charge manager of the said Branch. When he was on duty in the Bank at about 1 to 1-15 PM, one person came near his table and spoke in Hindi by asking him not to move and whatever cash is lying with him, be handed over to him. The Branch Manager with surprise saw upward and he found another man standing near counter with pistol in his hand. The person who was standing near the table of the complainant was holding knife in one hand and revolver in another hand and also spoke in Hindi to hand over the cash, failing which, he will fire. The Branch Manager including the other staff members of the Bank got frightened. During that time, one another third person came and entered in the counter, he passed near the table of the complainant and stood behind the chair of the complainant and cut down the telephone wire and the said person went near cashier Mr. A.M. Bhatt near cash counter and bundle of currency notes given by cashier to him had put by that third person in plastic bag. At that time, he saw one another fourth person on main door of the Bank. Then, he realised that said person turned to loot out the Bank. With a view to save the bank from looting, he tried to press the button of siren lying beneath his table, but on seeing the movement of the complainant, the person standing near him showed revolver to him and told him that don't move. So with a fear, he

did not press the siren button. At that time, one customer named Anand Karshanbhai Rathod came inside the Bank, he was blocked by the person standing near the main door and brought him in the office and gave a push towards strong room. Thereafter, the person standing near his table who was leader of all persons had told to go inside. On listing the words of that person, Shri Jasbirsing, A.M. Bhatt and Shinde gone in the strong room as well as branch Manager was also put inside. The complainant was last in it and he was hesitating to go inside the strong room, then the person standing near him spoke that you will die. On saying that, he forcibly took out the complainant from the chair and gave a push in the strong room. The person who had previously taken cash from Cashier Mr. A.M. Bhatt, came inside the strong room and got opened the safe through Mr. Bhatt and took out Rs.10,000/- cash and cartridges of 12 bore. When they are taking these articles and cash, complainant told that why they are taking cartridges, I will not permit you to take cash and cartridges. Thereafter, the leader of four persons' group gave a kick blow to the complainant, at that time, person who had taken the cash gone out of the room and leader person came out of the strong room and tried to close the door from outside, at that time, complainant closed the door from inside, so he could not close from outside. Thereafter, that leader person also ran away from the Bank, so complainant immediately came out of the room and ran behind them shouting" caught them" "caught them". All the four persons have tried to run away on motor cycle of customer Anand Rathod. Before motor cycle came on the tar road, the complainant caught hold the person sitting on the motor cycle and so all the four persons fell down. The complainant caught hold one person and another three persons tried to run away with cash put up in the bag towards Gandhi Ashram. Meanwhile one police jeep was going and on hearing the shouts, police personnel got down from the jeep and person who was caught hold by the complainant got down of the clutches of the complainant and tried to run away. The complainant also tried to run away after him. Then person who was running with cash bag thrown away the cash bag which was taking away by the complainant and tried to run back towards the Bank with cash and handed over to peon Shinde. Meanwhile police persons caught hold one person and another person was caught hold by public. Meanwhile police vehicle had come and they have handed over these two persons to police. The complainant telephoned to his head office. The names of the persons caught hold were asked in the presence of Bank staff people and customer Mr. Anand. Their names were stated by the complainant in his complaint and also

they came to know the name of the person who ran away. Thus, complaint of loot of Rs.2,21,138=00 by the accused were lodged by the complainant before Sabarmati Police. This complaint is proved, which is at Ex. 21.

9. First of all, we will discuss the evidence of Shankarbhai Motibhai Suvera, who was working as in-charge Manager of Central Bank of India, Gandhi Ashram Branch. He has deposed to the effect and further deposed that on 5.5.1997 at 11.00 hrs. he has gone to the said Bank. He was posted at the extension counter where he had to look after for the transaction of the Bank and also to look after the whole business of the Bank. He has deposed that at about 1 to 1-15 PM, one tall person came and stood near his table and told him in Hindi that not to move further and whatever cash is lying, be handed over to him. On hearing this, he surprised and when he has seen upward, he saw another person standing near the counter with hand made revolver. The person who was standing near his table was armed with knife and revolver who further told in Hindi that whatever cash is lying be handed over to him, otherwise, he will fire. Third person entered in the counter and passed near his table behind his chair and cut off the wire of the telephone. The same person sat near the cashier near Mr. Bhatt's table. The currency notes' bundle given to Mr. Bhatt for transaction and lying on the counter was taken by the said person and tried to put the same in the plastic bag. At that time, he saw towards the main door of the bank where another person was standing. Then he realised that four persons came to loot the Bank. He has tried to push the button of the siren. That person was standing near him told not to move further, so he did not press the button. At that time, one customer Mr. Anand Rathod has come who was brought by the person standing near the main door and gave his push in the strong room. The person standing near the table of the manager told to the other staff members that all should go in the strong room and all shall follow. The witness was last man gone in the strong room with hesitation. At that time, said person told that, you will die and gave push to him in the strong room. The person who had previously taken the cash from Mr. Bhatt got opened the safe from Mr. Bhatt and took out Rs.10,000/- from him and 12 bore cartridges. Then witness said that "why you are taking cash and cartridges. He will not allow him to take the same." AT that time, leader of four persons gave kick blow to the witness. At that time, person who had put cash in the bag was out of the strong room, last person came out of the strong room from outside but witness is repeatedly closing the same inside, so it will not close from

outside. All the four persons tried to run away from the bank and they have gone out of the bank premises. The witness has opened the strong room and rushed towards four person who have already started the motor cycle of customer Mr. Anand Rathod. All persons sat on it. They were about to bring the said motor cycle on tar road, witness went near them and tried to catch all the four persons together and in doing so, all five persons including the witnesses fell down on the road along with motor cycle. He was forcibly caught hold one person and others have run away. Meanwhile, one police van was passing near it, and on hearing the shouts, police people got down from the van. They have tried to follow the absconding persons. The person to whom witness caught hold had tried to run away from the clutch of the witness and he ran away. On seeing the police men following them, the person who had a plastic bag with currency notes etc., thrown away the bag on the road which was already taken by the witness and brought the same to the bank and gave it to one peon Shinde. Thereafter, he had informed his head office. The witness has deposed that out of running persons, one person was caught hold by public and another was caught hold by police. Both were handed over to police as police people have come in the van. The persons who were caught hold there, their names was asked. The details of the names given by the said persons were given by the witness in his deposition. They also gave name of the absconding person the detail of which is given by the witness in his evidence. Then cash was counted which comes to Rs.2,21,138=00. 16 cartridges were also found. He has categorically deposed that the person who was standing near his table and who was ordering all the other persons and he is accused no. 1 before the court. He also identified accused No. 2 as Satpalsing who had taken the cash from cashier Mr. Bhatt and also got opened the safe through Mr. Bhatt and took Rs.10,000=00 and sixteen cartridges. The third person was arrested by police to whom he is identified in the identification parade, whose name is Vikramsing alias Sushil alias Pappu who is accused No. 3 before the Court.

9.1 The witness was cross-examined at length. But nothing was found in his cross-examination which leads to disbelieve his evidence. As found from the cross-examination, the complainant was not knowing the names of the appellants, who has recorded his complaint. It is further found that the police has not taken the register maintained by the Bank showing the presence of the staff attached to the Bank. However, according to the complainant, the police has also seen the present

register. It is further found from the cross-examination that they also maintained the register in which they made entry about the cartridges as well as the rifle, which has been kept. However, the police has not taken any entry from the register. However, according to him, the police has seen the said register. He has not stated in his complaint about the description given by the person, who was standing near by him. He has also note stated by making report that telephone wire were cut by the accused persons and he was not remembered that whether by calling expert any panchnama is drawn in his presence. It is further found in his cross-examination that in his complaint, he has not mentioned that he has informed on telephone to his Divisional Manager at his Head Office. The rest of the suggestion made to the witness were denied. It is further found from the cross-examination that on the date of incident, the police has remained in the bank upto 5-00 PM and persons from news paper had come after 3-00 PM and took photographs of the persons, who were arrested with police persons. He has denied the suggestion that he has not identified any persons before the Executive Magistrate and further he has also denied that prior to holding of identification parade, police has shown the accused persons to him.

10. Anand Karshanbhai Rathod, PW-3, who was the customer of the Bank and who visited the Bank on the day of incident and his police statement was recorded by the police, he has not supported the prosecution case and accordingly, the said witness was treated as hostile and Public Prosecutor has examined the police statement, which was put to him, in which, the witness has denied of making such statement. However, this police statement is proved through evidence of the Investigating Officer, who has recorded his statement. It is also to be seen that as per the evidence of the witness, identification parade held by PW-1 Shri Gohil, who has supported the prosecution case fully and as per the evidence of Shri Gohil, Executive Magistrate, even after the accused were arrested, identification parade was arranged on 6.5.1997 and 7.5.1997 and as found from the panchnama Ex. 18, Shri Anand Rathod - PW-3 has identified the accused, who were arrested and their identification parade was arranged in presence of panchas by PW-1 Shri Gohil and this part of the evidence is not challenged by the defence.

11. Another important witness examined by the prosecution is Shri Haresh Nanakram Jethwani PW-4, who is running the business in the name of Vijay General Stores, near Kamal Cinema in Sabarmati area. It seems that at

the time when accused Nos. 1, 2 and 3 were arrested immediately after the offence is committed and from personal search of accused No. 1 Ajaysinh, a cash memo in the name of Vijay General Stores was recovered and this cash memo recovered from accused No. 1 is muddamal article No. 8 namely the bill issued by Vijay General Stores. As found from the evidence of PW-4, Haresh Jethwani, he is dealing in the business of ready made garments including the bags, luggage bag and certain cutlery articles. After the incident, he was called after three days in the court situated at Ghee Kanta. A person, who came to him to purchase one bag and he has issued bill for Rs.35-00. Before the Executive Magistrate, he has identified the person, who had purchased the bag from him and he identified accused No. 1, who was the person, who has purchased the bag by paying Rs.35-00 and he has issued bill. The witness has also identified the accused No. 1 before the Court. As per the evidence, the police has recorded his statement.

11.1 On going through the cross-examination, nothing transpires which help the defence. He denied the suggestion that he had prepared the false bill at the instance of the police. He has further denied that before the identification parade, in which, he identified accused No. 1, accused No. 1 was shown to him by police and police has asked him to identify the accused No. 1 to the Executive Magistrate. The police has not taken any counter foil, which he has issued nor the police has taken duplicate bill of same number. He has denied the suggestion that he has deposed falsely at the instance of the accused.

As found from Ex. 37, panchnama drawn by the Executive Magistrate in respect of panch, the witness has identified the accused No. 1. Accordingly, as per the evidence of PW-4 Shri Jethwani, the prosecution has established that a bill, which was found from the possession of accused No. 1, when he was arrested and a panchnama was drawn. This bill was muddamal article No. 8 and bill is for purchasing of one bag from Vijay General Store. Shri Jethvani has identified the accused No. 1 in the identification parade before the Executive Magistrate as well as the witness has identified the accused No. 1 before the Court.

12. PW-5 Jagdishbhai Sundarlal Parmar has deposed that at the relevant time, he was working as Executive Magistrate at Ahmedabad. He has deposed that he has received yadi from the Sabarmati Police Station of arranging identification parade in respect of the

arrested accused Vikram @ Sushil @ Pappu son of Navabsinh Pandit (Sharma) and on receiving yadi from the police, he has put the endorsement and fixed the date of holding identification parade on 21st May, 1997 at 15-00 hrs. in Executive Magistrate's Court, Court No. 1. He has also deposed about the manner in which the identification parade was arranged by him in presence of panchas and panchnama was drawn, in which, the witnesses have identified the accused No. 3 Shri Vikram @ Sushil and he has also produced the panchnama of identification parade held in which accused No. 3 Vikram was identified by the witnesses. There is nothing found in the cross-examination, which help the defence except all suggestions of bare denial.

13. Witness Ramjani Ishmail Shaikh - PW-6, panch was examined by the prosecution in respect of the arrest of accused No. 3 Shri Vikram @ Sushil and the said witness has not supported the prosecution case and therefore, the said witness is declared as hostile witness and Public Prosecutor has put the police statement given by him in which the panchnama was drawn of arrest of accused No. 3 as well as of willingness shown by said accused No. 3 Vikram of taking out the weapons, which were used in commission of offence. The witness has even denied about the statement made by him before the police and of drawing the panchnama. However, the panchnama of arrest of accused No. 3 is proved through police. It may be noted that as found from the panchnama copy of discovery of the weapon is shown to accused No. 3 Vikram, however, no weapons were either recovered or discovered from the place, which was shown by the said accused No. 3.

14. Dilipbhai Vijaysinh Rathod PW-7 has deposed that he is working in Guest House known as Bharosa Guest House and said Guest House is belonging to one Shri Girdharlal Trivedi, situated at Kalupur, Opp. to Kalupur-Ramnagar bus stand. He has deposed that he is doing work of showing the room in the Guest House and also he is doing the work to provide water to customers in the room and also doing some other miscellaneous work. As found from his deposition, on 4.5.1997, 4 persons came at his Guest House and they stayed in room Nos. 1 and 3 and he has also dropped the accused persons to room Nos. 1 and 3. He has also furnished the names of the persons, who came in the guest house by disclosing the names one by one i.e. Lalit Jain, Vikram, Raju and Virendra. He was also called at Ghee Kanta Court for identification of the accused persons, who stayed at Bharosa Guest House. The witness has also identified the accused No. 1 in the court. However, though he identified the accused No. 2

in the identification parade, he could not identify the accused No. 2 before the Court.

14.1 As found from the cross-examination, it is hardly relevant, which helps the defence, as he has not seen the actual incident of Robbery. He received telephonic message from Sabarmati Police Station that he has to go in the court of the Magistrate for identification parade. He has denied the suggestion that the police has told him to identify the accused before the Magistrate. He has also denied the suggestion that at the instance of the police, he has identified the accused Ajaysinh before the Court.

15. Chandansinh Mrugnathsinh PW-8 has deposed that at the relevant time on 5.5.1997, he was working in the police department in a controlling van of Deputy Police Commissioner. At the relevant time, the Deputy Commissioner was residing at Shivani Apartment, Ambawadi. At about 1-15 PM from Shivani Apartment, Ambawadi, they were proceeded towards the office of the Police Commissioner and when they passed near Central Bank at Sabarmati along with driver Jivaji, at that time, he was performing duty as an operator. This van is an ambassador car. When they reached near Central Bank, many people were gathered and accordingly, he told the driver to slow down the speed. He got down from the car and he was informed that robbery has taken place in the Bank. He has deposed that one person was brought by the public, whose name is Satpalsing - accused No. 2, who was kept and sit in the car. He took the accused to control room, from where, he informed the PI at Sabarmati Police Station and P.I. from Sabarmati Police Station came to the control room and took the accused No. 2 with him. He identified the accused No. 2 Satpal in the court.

15.1 In the cross-examination, the witness has deposed that in the car, there was a wireless set to inform the message to control room and there was a log book to note the movement of the car. He has deposed that he has not stated in his police statement that Satpalsinh was taken in the control room and he gave message to police station at Sabarmati and Police Inspector has taken Satpal accused No. 2 from control room. During investigation, the Investigating Officer has not seized or obtained any copy of the log book nor the log book is shown to the officer, as according to him, no such demand was made by the officer. He has also not stated in his police statement about the Satpalsing and he had not gone before the Executive Magistrate for identification parade of

accused Satpalsing. He has denied the suggestion that as he has served in the police station and to give success to the police, he is deposing falsely.

16. Khimjibhai Kanjibhai PW-9 was working as a Constable in Naranpura Police Station. As found from his deposition that on 5.5.1997 when he was on duty, he had gone from Naranpura Police Station to Shahibaug Head Quarter for depositing the Government Articles. Alongwith him, Head Constable Laxmansinh Sitaram and Police Constable Anil Rangrav were there. They were proceeding in a police jeep. They reached at the Head Quarter at 12-00 to 12-30 PM and after depositing the articles, they returned at about 1-00 PM. When they reached near Central Bank at Gandhi Ashram, they show crowd were gathered. One person having revolver in his hand was standing by pointing revolver towards the crowd. They have stopped the jeep. He got down from the jeep and by seeing me, the person ran away. The witness and other persons had also chased that man and apprehended the said person and that person was handed over to police by calling police persons from Sabarmati Police Station. He identified that accused as accused No. 1. He has identified the accused No. 1 before the Court.

16.1 In his cross-examination, it is found that he has not stated in his police statement that one man having revolver, pointed out the revolver towards crowd and on seeing the witness, the accused ran away and is caught hold by the witness and other persons. He has not identified the said accused in the identification parade. He has denied the suggestion that with a view to see that police will get success in the case, he is deposing falsely. It may be noted that this witness was not the witness in which the identification parade was arranged before the Executive Magistrate for identification of arrested accused Nos. 1 and 2.

17. Jivanbhai Mohanbhai Gohil PW-10 has not supported the case of the prosecution and he turned hostile. He was the panch to Ex. 37 dated 5.5.1997. As he has not supported the case of the prosecution, the Public Prosecutor has after treating the said witness as not supported the case of the prosecution, has put the witness about his police Statement. In the police station, the witness has in turn admitted that he was called at the Central Bank situated at Gandhi Ashram Branch and along with him, another panch was Sureshbhai and Branch Manager Shankarbhai Suvera was also present and Manager has shown the place. Rest of the things, which is found in the panchnama, the witness has not

supported the prosecution and he has denied his police statement.

18. The prosecution has also examined another witness namely Sureshbhai Punjabhai Rathod PW-11. As found from his evidence, he has proved the panchnama Ex. 37. As per panchnama Ex. 37, the cash amount, which was looted by the accused persons, which was counted, found Rs.2,21,000-00 as well as the Bank rifle and 16 cartridges and one news paper published from Rajesthan in Hindi language were seized by the police.

18.1 In the cross-examination, it is found that he was not aware about the real incident personally. His shop is situated at a distance of about 200 steps from the Bank and he knows all the staff members of the Bank. He is also having bank account with the said Bank. He was called by Mr. Shankar Suvera, to act as a panch. He was called by Shri Shankarbhai at about 3-00 PM. He has not counted the cash amount. He has denied that he has not seen any plastic bag or cash amount with revolver, cartridges and knife. He has denied that at the instance of the police, he is deposing falsely.

19. The last witness examined by the prosecution is Investigating Officer Shri Natvarsinh Bhimsinhji Dodiya. The Dodiya at the relevant time was working in Sabarmati Police Station as P.S.I. He was on patrolling duty in the area of Sabarmati and he received the message from control room that he should reach immediately at the Central Bank situated at Gandhi Ashram of Ashram Road. He accordingly, reached that the said Bank. Bank Manager Shri Shankar and other staff members and other persons were present. Branch Manager Shankarbhai has apprised about the incident and Shankarbhai was lodged complaint and complaint was recorded as per his say, which was written by his writer constable Shri Pathan. Thereafter, he has drawn the panchnama of scene of offence. From the place of incident, he seized knife, cartridges, one bag containing cash amount and one Hindi news paper. He identified the muddamal articles in the court, which were seized and panchnama was drawn. The accused No. 1 was also there, who has after taking complaint of complainant, the report was made by him for registering the offence and the said report was sent at Police Station, which is also in the hand written of writer head constable Shri Pathan signed by him. He has investigated the said case. Accused No. 1 Ajaysinh and accused No. 2 Satpal were arrested under panchnama. From accused No. 1 Ajaysinh, from land hand pant pocket, one country made revolver and from the right hand pant pocket 8 cartridges

of 9 mm were also found. He identified this revolver and cartridges, which was received by him from accused No. 1 before the Court. He identified the signature on the said slip in panchnama as well as the signature in the panchnama as well as signatures put by him. From the pocket of accused No. 1 Ajaysinh 9 currency notes of Rs.50-00 with bill of Vijay General Stores for purchase of bag was seized. He has also identified these muddamal before the Court as muddamal articles Nos. 7 and 8. From the personal search of accused No. 2 Satpal, cash amount of Rs.52 were recovered, which were also sealed and panchnama to that effect was drawn in the hand written of his writer head constable Shri Pathan. Both the accused were arrested. He identified the accused Nos. 1 and 2 before the court. He has issued yadi informing the Executive Magistrate for holding identification parade. Further investigation of the case was handed over to 2nd PI Shri Aedanwala and Shri Aedanwala has also arrested one more accused and his identification parade was also arranged. From the said accused, Shri Aedanwala has also recovered revolver. The revolver and cartridges were sent before the FSL for examination and after receiving the report from the FSL, the chargesheet was filed against the accused persons. He has proved the police statement made by witness Anand Rathod as we discussed that said witness has not supported the prosecution case and he was turned hostile to the prosecution. As found from his deposition that accused No. 3 was arrested by 2nd PI Shri Aedanwala under panchnama. He has proved the signature of Aedanwala and this panchnama Ex. 39 and 40 are accordingly proved through these witnesses.

19.1 In the cross-examination, it is found that he has received message from the control room at about 1-00 PM. He is not remembered that whether that message was written down in his diary or not. The distance from the scene of offence and Sabarmati Police Station is at a distance of about 2 to 2 1/2 Km. He could not give exact time that at what time, he reached at the Bank and at what time he has started taking complaint from the complainant. He left from the police station in his jeep van with 4 police persons, however, he could not say or disclose the names of said person as he has not remembered the names. It is further from the cross-examination that while recording panchnama of scene of offence, there is no wheel mark of motorcycle. It is further found that it is true that telephone wires were removed from the connection, however, he could not say that whether the wires were disconnected or wires were cut. He has denied that he has not mentioned in the

complaint about the siren. He has denied the suggestion that he has recorded the statement of Anand Rathod at his own. He has denied that he has recorded and mentioned the facts which Anand Rathod has not stated and found in the police statement. He has not taken down the names of the persons from public, who have arrested the accused, as they were not found. He has not recorded the statements of any superior officer of the Head Officer of the Central Bank of India. Her has not taken the help of dog squad and he has also not taken the chance print of the accused. He has not taken any map of the scene of offence and drawn any panchnama of the cloths of the Manager. He has denied the suggestion that he has falsely involved the accused in the offence.

20. Defence of the accused is of total denial and they have shown their ignorance about the incident. It is further found while answering last question put to question, it is their say that they were falsely involved and they are not knowing anything in the matter.

21. The learned trial Judge has on appreciating the evidence recorded finding that the accused persons and the absconding persons have formed a criminal conspiracy to commit robbery in the Bank i.e. Central Bank of India, Gandhi Ashram Branch and they have committed offence of robbery with aid and abetment of each other and thereby they have committed offence under Sections 397, 426, 452 read with Section 120 (b) of the Indian Penal Code. Learned trial Judge has also on considering the evidence and defence, recorded finding that only accused Nos. 1 and 2 have committed offence under Section 25 (1) and 27 of the Arms Act and as they have in their possession the weapons like revolver without licence and accordingly, accused No.3 was exonerated for the said offence and further that even for the offence under Section 135 (1) of the Bombay Police Act, the prosecution has established the case against accused Nos. 1 and 2 and not against accused No. 3. In light of the evidence led by the prosecution and in light of the defence of the accused persons, the learned trial Judge has accepted the evidence of complainant Shri Shankarbhai PW-2, who was working as Branch Manager and in his presence, at the instance of the accused, Robbery has taken place.

22. To examine the contention of Mr. Supehia that learned trial Judge was not right in accepting the evidence of the prosecution witness, merely the independent witness PW-3 Shri Anand Rathod has not supported the prosecution case. It is true that said

witness has turned hostile to the prosecution. Shri Anand Rathod was the customer and who used to come in the Bank as relative of Shri Anand had an account with the said Bank. As found from the evidence of Shri Suvera, Branch Manager, who in turn has deposed in the manner in which the Robbery has taken place in the Bank at the instance of the accused persons. PW-2, Shri Suvera in fact has seen the entire incident by which the accused persons one by one had approached him and threatened him and these accused persons had in fact pushed him as well as other staff members of the Bank in the strong room. PW-2 Shankarbhai has also caught hold of accused No. 1, who subsequently had ran away and the said accused immediately thereafter was apprehended by the other persons and these accused were brought in the Bank immediately. The panchnama is also proved. In our view, from the evidence of PW-2 Shri Shankarbhai, the prosecution has established the case and the learned trial Judge has rightly accepted the evidence while recording conviction of the accused persons. Shri Haresh Jethwani PW-4, in our view is also an independent person and through evidence of Shri Jethawani, the prosecution has established that the accused No. 1 had come and purchased one bag from him and muddamal article No. 8 bill, which was seized 1 at the time of search of accused No. 1, when accused No. 1 was arrested. The Jethwani has also identified the accused No. 1 before the Executive Magistrate while holding identification parade and he has also identified the accused before the Court. Shri Sureshbhai Punjabhai Rathod - PW-11 has supported the prosecution case, who had proved the panchnama Ex. 37. Though other panch has not supported the prosecution. In our view, it is difficult for us to accept the contention of Mr. Supehia that the conviction recorded by the learned trial Judge is without any evidence or the learned trial Judge has committed error in appreciating the evidence. In our view, in a bright day light, the accused has committed this robbery, however fortunately, in this robbery there was no injury and further that no loss to the Bank but at the same time, the accused cannot be considered that they have not committed offence. The prosecution has in turn established that the accused and the absconding accused who had with conspiracy committed robbery. However, the cash amount and other articles like cartridges, rifles were thrown away in the bank and they ran away. However, accused Nos. 1 and 2 were apprehended immediately after they have committed offence and accused No. 3 was thereafter arrested by 2nd PI, Shri Aedanwala, who was also in charge of the investigation.

23. Considering the submission of Mr. Supehia on the point of sentence, in our view, though accused Nos. 2 and 3 at the time of offence were boy aged about 20 and 23 years respectively, however, looking to the dareness of committing such offence, it is not possible for us even to interfere with the order of conviction and sentence imposed by the learned trial Judge or to modify the sentence as prayed for by Mr. Supehia. As found from the jail statement furnished by Mr. Poojari in respect of accused No. 1, he was also involved in another case vide CR. No. 96 of 1990 for the offences under Sections 394, 397, 307, 34 of the IPC as well for the offence under the provisions of the TADA Act and the said case is pending before the Delhi Court and accused is also not released on bail in that case.

24. Accordingly, present appeal filed by the accused is dismissed. The order of conviction recorded by the learned Additional City Sessions Judge, Court No. 9, Ahmedabad while disposing of Sessions Case No. 219 of 1997 dated 5.1.1999 against the appellants original accused for the offences under Sections 397, 120(B) of the IPC and the sentence of RI for 10 years and fine of Rs.3000 each and in default of fine, further RI for 3 months as well as conviction recorded for the offence under Section 452 of the IPC and sentence of RI for 5 years and fine of Rs.2000 each, in default of fine, further RI for 2 months is confirmed. The order of conviction recorded against appellant accused Nos. 1 and 2 for the offence under Sections 25 (1) and 27 of the Arms Act as well as for the offence under Section 135 (1) of the Bombay Police Act is confirmed and the sentence imposed by the learned trial Judge on that count is also confirmed. Rest of the order passed by the learned trial Judge is hereby confirmed.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)
pallav